

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

GREGORY DAVIS,

Petitioner,

v.

Civil Action no. 1:07cv63

UNITED STATES OF AMERICA, et al.,

Respondent.

ORDER DENYING MOTION TO DISQUALIFY COUNSEL

On May 14, 2007, the *pro se* plaintiff filed this Bivens action and Federal Tort Claim Act seeking monetary damages for alleged violations of BOP Policy Statements with respect to the handling of his special mail. On June 4, 2007, the plaintiff filed a Motion to Disqualify Counsel, seeking an order prohibiting the United States Department of Justice from providing representation to the individual “John Doe” mail room staff employees. As grounds for his motion, the plaintiff cites a potential conflict of interest and specifically argues that the United States may attempt to avoid liability by showing that the “John Doe” employees were not acting within the scope of their employment.

While the Department of Justice is the statutory representative of the United States, it does not automatically represent individual federal employees, who have been sued in their individual capacity. In fact, the Department of Justice can only represent individual defendants if they were acting within the scope of their employment. Therefore, the potential conflict of interest raised by the plaintiff cannot possibly occur.

Accordingly, the Motion to Disqualify Counsel (Doc. 10) is moot is **DENIED**.

IT IS SO ORDERED.

The Clerk of the Court is directed to mail a copy of this Order to the pro se plaintiff.

DATED: November 5, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE